

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5040 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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PALDI KANKREJ SEVA SAHKARI MANDALI LIMITED

Versus

SANJAYBHAI BHAVSAR

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Appearance:

MR HARIN P RAVAL for Petitioner  
MR SN SHELAT, ADDL. ADVOCATE GENERAL with MR  
PRASHANT DESAI, GOVT. PLEADER for Respondent Nos.1 & 2  
MR YN OZA for Respondent No. 3  
MR KG VAKHARIA, Sr. Advocate for Respondent No. 4

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 24/07/1999

ORAL JUDGEMENT

In view of the urgency of the situation and in view of the fact that the arguments concluded in the evening of 24.7.1999 and the last date for filing nomination forms is 27.7.1999, this Court pronounced the order allowing the petition for the reasons to be recorded subsequently. The following are the reasons for passing that order.

2. In this petition under Article 226 of the Constitution, the petitioner-Paldi Kankrej Seva Sahakari Mandli Ltd. (hereinafter referred to as "the petitioner-society") registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the Act") has challenged the decision dated 14.7.1999 of the Deputy Collector, Ahmedabad (Rural) in his capacity as the Returning Officer for elections to the Board of Directors of the Ahmedabad District Co-operative Bank Ltd. (hereinafter referred to as "the bank").

3. There is no dispute about the fact that the respondent-bank is a specified society falling within the purview of the provisions of Chapter XIA of the Act providing for elections of committees and officers of certain societies. The said Chapter applies to the societies belonging to any of the categories specified in Section 74C of the Act. The respondent-bank is admittedly a specified society as contemplated by the provisions of the said Chapter. There is also no dispute about the fact that the elections to the Board of Directors of the respondent-bank are governed by the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 (hereinafter referred to as "the Election Rules"). Rule 4 of the Election Rules requires several specified societies to prepare provisional list of voters for the year in which the general election is due to be held. Persons who are members as on the date of drawing up the accounts of the year immediately preceding the year in which such election is due are to be included in the provisional list. The names of the voters are to be arranged constituency wise. Rule 5 provides for particulars to be included in provisional list of voters. Sub-rule (2) of Rule 5 is relevant for the purpose of this petition and the same reads as under:-

"(2) Where a society is a member of a specified society, the specified society shall call for the name of the delegate duly authorized to vote at an election on behalf of the affiliated society, so as to reach it, within ten days next after the date of drawing up the accounts. While communicating the name of its delegate to the specified society, the affiliated society shall enclose a copy of the resolution of the society or its committee under which the delegate is so authorized. The specified society shall include in the list of voters the names of

all such delegates as have been communicated to it before the date fixed for publication of the provisions list. In addition to the names of the delegates, the list shall contain the names of the affiliated societies, their registration numbers and addresses and the names of constituencies, if any, to which they belong. A society which has communicated the name of its delegate shall by like resolution be permitted to change the name of its delegate upto the sixty day before the date appointed by the Collector under rule 16 of said rules for making nominations."

(emphasis supplied)

4. The petitioner-society by its resolution No. 2 dated 21.12.1998 (Annexure "G") had appointed Balvantrai Umedrai Brahmhatt, respondent No. 4 herein as its delegate for participating in the elections to the Board of Directors of the respondent-bank. Thereafter the election program was declared as per which 18.6.1999 was fixed as the date of publication of the provisional list of voters. 24.6.1999 was fixed as the last date for lodging objections against the said provisional list and 5.7.1999 was fixed as the date for publication of the final voters list. As per the further election program blank nomination forms were to be collected between 15.7.1999 and 20.7.1999 and the nomination forms duly filled in are to be submitted from 21.7.1999 to 27.7.1999 (including public holidays). 29.7.1999 is the date of scrutiny of the nominations. 31.7.1999 is the date for publishing the list of valid nominations. Nomination forms could be withdrawn from 2.8.1999 to 5.8.1999. 6.8.1999 is the date for declaring the final list of candidates and 16.8.1999 is the date of polling. 17.8.1999 is the date for counting the votes and also for declaring the results.

5. On 6.7.1999 the petitioner-society passed Resolution No. 3 (Annexure "J") cancelling the previous Resolution dated 21.12.1998 by which respondent No. 4-Balwanrai was appointed as the delegate of the petitioner-society for the aforesaid elections. By Resolution No. 4 (Annexure "K") passed on the same day, the petitioner-society appointed Popatji Khetuji Chauhan as its delegate for the aforesaid elections. According to the petitioner-society, both the aforesaid resolutions were filed with the Returning Officer on 8.7.1999. However, Balwantrai, respondent No. 4 herein, lodged his objection on 10.7.1999 contending that he was entitled to

be continued as the delegate of the petitioner-society and that he could not be replaced by another delegate; respondent No. 4 also objected to the change on the ground that respondent No. 4 was hale and hearty as certified by the Medical Practitioner and that respondent No. 4 was also rendering services as a Director in other institutions; hence, the name of respondent No. 4 be continued in the final voters list as a delegate of the petitioner-society.

6. By his impugned decision dated 14.7.1999, the Returning Officer declined to accept the resolutions dated 6.7.1999 on the following grounds :-

- (i) The provisional list of voters was published on 18.6.1999 and the last date for submitting objections was 24.6.1999. The petitioner-society had not lodged any objection before 24.6.1999.
- (ii) Respondent No.4-Balwantrao was present before the Returning Officer with the representation that he was hale and hearty. Hence, there was substance in the objection of respondent No. 4 that the provision resolution dated 21.12.1998 was wrongly cancelled by the petitioner-society.

The Returning Officer accordingly decided to continue the name of respondent No. 4 as the delegate of the petitioner-society in the final list of voters also.

It is against the aforesaid decision that the petitioner-society has filed the present petition praying that the impugned decision dated 14.7.1999 of the Returning Officer be quashed.

7. At the hearing of this petition, Mr SN Shelat, learned Additional Advocate General with Mr Prashant Desai, learned Government Pleader appearing for respondent No.1-Returning Officer and respondent No.2-District Registrar, Ahmedabad (City) and Mr KG Vakharia, learned Senior Advocate appearing for respondent No. 4 have raised the preliminary contention about maintainability of the petition by making the following two fold submissions :-

- (i) This petition under Article 226 of the Constitution for challenging the decision of the Returning Officer in the midst of the election process is not maintainable at all and is liable to be rejected at the threshold without going

into the merits of the controversy.

- (ii) In the alternative, even if the petition is maintainable, the petitioner has a statutory remedy of approaching the Election Tribunal after the elections are over and, therefore, as per the settled legal position this Court may not interfere with the election process once it has already commenced. Reliance is placed on various decisions including the decision dated 22.6.1998 of this Court in Special Civil Application No. 4190 of 1998 and connected matters.

8. On the other hand, Mr ND Nanavati, learned counsel with Mr Harin Raval for the petitioner-society have submitted that the preliminary objection is misconceived on account of the following contentions :-

- (i) The petition challenges the refusal of the Returning Officer to accept the change of delegate made by the petitioner-society more than six days prior to the date of filing nomination papers. The impugned decision was taken and submitted prior to the date of filing nomination papers and, therefore, the impugned decision is not a part of the election process. The election process can be said to have commenced only when the nomination papers are filed. The petition was filed prior thereto. Reliance is placed on the decision of a Division Bench of this Court in case of Surendrasinhaji Jorawarasinhji Jhala vs. Chief Electoral Officer, AIR 1969 Guj. 292 to contend that the preparation of the electoral roll is a stage anterior to the conduct of the election and it does not form part of the process of election.

- (ii) Sub-rule (1) of Rule 75 of the Election Rules reads as under :-

"75. Presentation of election  
petition.-(1) An election petition  
calling in question any election may be  
presented by any candidate or any voter  
within two months from the date of  
declaration of the result of the  
election."

In the final list of voters the name of the petitioner-society or its delegate as appointed by the resolution dated 6.7.1999 does not appear.

Hence, the Election Tribunal may as well reject any election petition filed by a party or person who is not shown as a voter in the final list of voters.

(iii) Even if any election petition is maintainable under Rule 75 after the elections are over, there is no constitutional bar against entertaining the challenge to a decision when the election process has already commenced. The rule that ordinarily the Court would not interfere once the election process has commenced is a rule of prudence and the exceptions thereto are also recognized. The instant case falls within those exceptions.

9. Having heard the learned counsel for the parties on the aforesaid preliminary issue, while this Court does not accept the first two contentions raised on behalf of the petitioner-society, the Court does accept the third submission urged on behalf of the petitioner-society.

10. As stated above, Rules 4 to 7 require preparation of the provision list of voters and the final list of voters for the year in which general election is due to be held. Hence, there is no such thing as a running continuous list of voters. In the case of Surendrasinhaji Jorawarasinhji Jhala vs. Chief Electoral Officer, AIR 1969 Guj. 292, the Division Bench has examined the scheme of the constitutional provisions relating to the elections to the House of Parliament and to the State Legislative Assemblies and also the provisions of the Representation of the People Act, 1950 ("the 1950 Act" for short) and the Representation of the People Act, 1951 ("the 1951 Act" for short) and came to the conclusion that the 1950 Act deals with the various anterior stages such as allocation of seats, the delimitation of constituencies and the preparation of electoral rolls, while the 1951 Act deals with the various stages in the process of election and matters arising out of or connected with those stages. Hence, the Division Bench came to the conclusion that the preparation of electoral rolls is not a stage in the process of election but it an anterior stage and that the process of election commences only on the issue of a notification under the relevant section of Part III of the 1951 Act. The Division Bench observed that if the wider expression "election" were to be accepted, even when an application is made by a person for inclusion of his name in the electoral roll immediately on the conclusion of an election and long before another election is due, that would be liable to be regarded as a

stage in the process of election and in that case the process of election would continue indefinitely. The aforesaid reasoning contained in para 6 of the judgment in the case of Surendrasinhaji Jorawarasinhji Jhala vs. Chief Electoral Officer, AIR 1969 Guj. 292 would indicate that the same cannot apply to the elections of a specified society where list of voters is to be prepared for a particular general election. Hence, in the case of a specified society, the election process would commence when a provisional list of voters is prepared by the society for the year in which the general election is due to be held.

11. As regards the contention of Mr Nanavati that under Rule 75 of the Election Rules, the petitioner-society may not have any locus standi to file the election petition, though the argument may prima facie seem to be attractive, the same cannot be accepted. Rule 75 is a part of the Election Rules framed by the State Government in exercise of the powers conferred by Section 168(3) read with Section 145Y of the Act. Section 145 specifically provides that the State Government may make rules consistent with the Act generally to provide for and to regulate all or any of the other matters relating to the various stages of the elections including preparation of list of voters. Hence, the Election Rules have to be read in such a manner as to make them consistent with the provisions of the Act including Section 145U, the relevant portion of which reads as under :-

"145U. Disputes relating to elections to be submitted to the Tribunal - (1) Notwithstanding anything contained in section 96 or any other provisions of this Act, any dispute relating to an election shall be referred to the Tribunal.

(2) Such reference may be made by an aggrieved party by presenting an election petition to the Tribunal :

Provided that no such petition shall be made till after the final result of the election is declared and where any such petition is made it shall not be admitted by the Tribunal unless it is made within two months from the date of such declaration :

(emphasis supplied)

The expressions "an aggrieved party" is wide enough to include a person or a society claiming that its name ought to have been included in the final list of voters. Hence, Rule 75 has to be read in light of the provisions of Section 145U and, therefore, it has to be held that the election petition could be filed by any aggrieved party including a person or society whose name is not included in the final list of voters, but who/which contends that his/its name ought to have been included in the final list of voters.

12. Even after holding that an election petition would be maintainable before the Election Tribunal constituted under the Act and the Rules, since unlike for elections to the Lok Sabha and to State Legislative Assemblies and elections to the local bodies like Municipal Corporations, Municipalities and Panchayats, there is no constitutional bar against entertaining the petition in respect of elections to a Co-operative Society, it is not possible to accept the first preliminary contention urged on behalf of the respondents. It is, therefore, held that the present petition under Article 226 of the Constitution is maintainable and is not liable to be rejected at the threshold on that ground.

13. Now the second preliminary contention urged on behalf of the respondents is required to be considered. It is true that ordinarily the Courts are not to interfere with the election process once the election process has commenced and the party must be left to the statutory remedy of filing election petition after the election is over. In the case of Gujarat University vs. N.U. Rajguru & Ors., 1988 (1) GLR 308, the Hon'ble Supreme Court has held that ordinarily it is not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution by-passing the machinery designated by the Act for determination of the election dispute and that ordinarily the remedy provided by the statute must be followed before the authority designated therein, "but there may be cases where exceptional or extraordinary circumstances may exist to justify by-passing the alternative remedies". A Division Bench of this Court has also rendered a decision on the aforesaid lines in 1998 (1) GLH 170.



14. In view of the aforesaid pronouncements, the Court has the discretion to consider whether the petition should be entertained on merits provided the petitioner makes out that the case at hand is an exceptional or extraordinary case. Turning to the circumstances giving rise to filing of the present petition, there is no dispute about the fact that the petitioner-society which had earlier sent the resolution dated 21.12.1998 appointing respondent No. 4-Balwantrao as its delegate for participating in the elections to the Board of Directors of the respondent-bank had after publication of the provisional list of voters on 18.6.1999, cancelled the aforesaid resolution dated 6.7.1999 and by another resolution dated 6.7.1999 appointed Popatji Khetuji Chauhan as its delegate. There is also no dispute about the fact that both the resolutions were lodged by the petitioner with the Returning Officer on 8.7.1999 and that the same was done well prior to the expiry of the time limit stipulated in sub-rule (2) of Rule 5 of the Election Rules. Even at the cost of repetition, the relevant portion of sub-rule (2) of Rule 5 is quoted hereinbelow.

".....A society which has communicated the name of its delegate shall by like resolution be permitted to change the name of its delegate upto the sixth day before the date appointed by the Collector under rule 16 of said rules for making nominations."

(emphasis supplied)

15. In the facts of this case, the dates for making nominations were 21.7.1999 to 27.7.1999. There may be two views possible on the question whether the sixth day before the date appointed should be counted before the first date appointed for making nominations or before the last day appointed for making nominations. Without expressing any opinion on the said controversy, even if the first day of making nominations is taken as the relevant date, the petitioner-society could have communicated the change in the name of its delegate upto 15.7.1999. Admittedly, resolution Nos. 3 and 4 dated 6.7.1999 passed by the petitioner-society were communicated to the Returning Officer on 8.7.1999 and the impugned decision of the Returning Officer was rendered on 14.7.1999. In this view of the matter, the Returning Officer could not have refused to accept the request of the petitioner-society to change the name of its delegate. In the impugned decision, the Returning Officer stated that the name of the delegate was changed

after 24.6.1999 i.e. after the last date for lodging objections against the provisional list of voters. The ground given by the Returning Officer is irrelevant and flies in the face of the statutory rule permitting the society to change the name of its delegate upto the sixth day before the date appointed for making the nominations.

16. The other ground given by the Returning Officer is that the society had decided to change its delegate without valid reasons and that respondent No. 4, the original delegate was hale and hearty to act as the delegate. It must be said that the said ground was also irrelevant and the Returning Officer had no jurisdiction to reject the resolution of the society to change its delegate on this ground. It is the society which is a member of the respondent-bank. Being impersonal the petitioner-society had to have a human agency to contest the election as a candidate and even to cast its vote at the elections. Normally the principal is entitled to change his agent or delegate unless the Act or the Rules under which the principal is acting imposes any limitation on such power. The only limitation imposed by the Rules in this case is that the name of delegate can be changed provided the society communicates such change made by a resolution and the communication is made upto the sixth day before the date appointed for making nominations. So long as the resolution changing the delegate is communicated to the Returning Officer prior to the aforesaid time limit, it is for the member society to decide as to who shall be its delegate, subject to the other provisions of the Act and the Election Rules, but no provision of the Act or the Election Rules is pointed out by the respondents under which the society is prohibited from changing its delegate if the original delegate is available to act as a delegate. Merely because respondent No. 4-original delegate came forward and stated that he was ready and willing to continue to act as a delegate of the petitioner-society, that was no ground for the Returning Officer not to accept the change made by the petitioner-society in the name of its delegate. The impugned order of the Returning Officer does not give any other ground for rejecting the said change. Hence, the impugned decision of the Returning Officer must be held to be patently illegal and without jurisdiction. The illegality is so apparent on the face of the record that rejecting the petition at this stage and requiring the petitioner-society to file an election petition after the elections are over would not only be a travesty of justice but also frustrate the letter and spirit of the democratic process. The very object of the self imposed rule that the Courts shall not interfere

with the election process when the election process has commenced is to ensure that the election process goes on. When the Returning Officer himself commits a patent illegality and rejects the resolution of the petitioner changing its delegate and this is done without any power or jurisdiction, this must be held to be one of the exceptional and extraordinary circumstances justifying the interference of this Court with the impugned decision of the Returning Officer.

17. However, Mr Vakharia, learned Sr. Advocate for respondent No. 4 has submitted that in a similar case this Court (Coram : Mr Justice H.L. Gokhale) had rendered decision dated 22.6.1998 where some of the member societies had passed resolutions changing the names of their delegates and this Court refused to interfere on the ground that the election process had commenced.

As regards the aforesaid contention of Mr Vakharia, it is required to be noted that in the said case, the list of voters contained the names of about 250 societies and out of them about 44 societies subsequently passed resolutions changing the names of their delegates. This Court was, therefore, of the view that interference by the Court by directing the Returning Officer to change the names of such large number of delegates would result into curtailment of the period of campaigning (Para 13 of the judgment).

It is obvious that changing the name of delegate of one member society cannot stand on the same footing as changing the names of delegates of 44 societies. The decision cited by Mr Vakharia is, therefore, distinguishable on the facts. It is also not clear from the said judgment whether in the facts of that case the concerned member societies had communicated their respective resolutions changing the names of their delegates prior to the sixth day preceding the date of filing nomination forms.

18. In view of the above discussion, the petition deserves to be allowed. The impugned decision dated 14.7.1999 of respondent NO. 1 (Annexure-V to the affidavit-in-reply of respondent No. 1) upholding the objections against the change of its delegate by the petitioner-society as per its resolution Nos. 3 and 4 dated 6.7.1999 (Annexures J & K respectively) is quashed and set aside, and respondent No. 1 is directed to accept the said resolutions and to act upon resolution No. 4 dated 6.7.1999 at Annexure "K" while holding the

election to the Board of Directors of the Ahmedabad  
District Co-operative Bank Ltd.

Rule is made absolute with no order as to costs.

Direct Service is permitted.

July 24, 1999 (M.S. Shah, J.)